

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EDWARD ERIKSON, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

CORNERSTONE PROPANE PARTNERS LP,  
KEITH G. BAXTER, RICHARD D. NYE,  
RONALD J. GOEDDE and CURTIS G.  
SOLSVIG, III,

Defendants.

No. C 03-2522 MHP

**MEMORANDUM & ORDER**  
**RE CONSOLIDATION AND**  
**APPOINTMENT OF LEAD PLAINTIFF**

OTTO ALTSCHULER and JAMES J. RYAN,  
on Behalf of Themselves and All Others Similarly  
Situated,

Plaintiff,

v.

CORNERSTONE PROPANE PARTNERS LP,  
KEITH G. BAXTER, RICHARD D. NYE,  
RONALD J. GOEDDE and CURTIS G.  
SOLSVIG, III,

Defendants.

No. C 03-2566 MHP

1 JOHN GALLANDER, on Behalf of Himself and  
2 All Others Similarly Situated,

No. C 03-2637 MHP

3 Plaintiff,

4 v.

5 CORNERSTONE PROPANE PARTNERS LP,  
6 KEITH G. BAXTER, RICHARD D. NYE,  
7 RONALD J. GOEDDE and CURTIS G.  
8 SOLSVIG, III,

9 Defendants.  
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11 RONALD D'ELIA, Individually and on Behalf of  
12 All Others Similarly Situated,

No. C 03-2685 MHP

13 Plaintiff,

14 v.

15 CORNERSTONE PROPANE PARTNERS LP,  
16 KEITH G. BAXTER, RICHARD D. NYE,  
17 RONALD J. GOEDDE and CURTIS G.  
18 SOLSVIG, III,

19 Defendants.  
20 \_\_\_\_\_/

21 HARRIET GOLDSTEIN, on Behalf of Herself  
22 and All Others Similarly Situated,

No. C 03-2759 MHP

23 Plaintiff,

24 v.

25 CORNERSTONE PROPANE PARTNERS LP,  
26 KEITH G. BAXTER, RICHARD D. NYE,  
27 RONALD J. GOEDDE and CURTIS G.  
28 SOLSVIG, III,

Defendants.  
\_\_\_\_\_/

1 E'LARA HANNAH, Individually and on Behalf  
2 of All Others Similarly Situated,

3 Plaintiff,

4 v.

5 CORNERSTONE PROPANE PARTNERS LP,  
6 KEITH G. BAXTER, RICHARD D. NYE,  
7 RONALD J. GOEDDE and CURTIS G.  
8 SOLSVIG, III,

9 Defendants.

10 WILLIAM JERGENSEN, Individually and on  
11 Behalf of All Others Similarly Situated,

12 Plaintiff,

13 v.

14 CORNERSTONE PROPANE PARTNERS LP,  
15 KEITH G. BAXTER, RICHARD D. NYE,  
16 RONALD J. GOEDDE and CURTIS G.  
17 SOLSVIG, III,

18 Defendants.

19 D.S. ASHER, on Behalf of Himself and All  
20 Others Similarly Situated,

21 Plaintiff,

22 v.

23 CORNERSTONE PROPANE PARTNERS LP,  
24 KEITH G. BAXTER, RICHARD D. NYE,  
25 RONALD J. GOEDDE and CURTIS G.  
26 SOLSVIG, III,

27 Defendants.

No. C 03-3076 MHP

No. C 03-3163 MHP

No. C 03-3265 MHP

1 The eight related lawsuits at issue here involve allegations that CornerStone Propane Partners LP  
2 (“CornerStone”) violated securities laws by misrepresenting the state of its propane business in order to  
3 artificially inflate its stock. Four separate parties have filed motions, each seeking to consolidate these eight  
4 lawsuits, and to have itself named “lead plaintiff” in the resulting class action. After having considered the  
5 parties’ arguments and submissions, and for the reasons set forth below, the court rules as follows.

6 **BACKGROUND**<sup>1</sup>

7 CornerStone is the country’s sixth largest national wholesale and retail marketer of propane, serving  
8 over 440,000 customers in more than 30 states. On February 11, 2003, CornerStone admitted in its 8-K  
9 securities filing that it would have to restate its financial results for fiscal years 2000 and 2001 due to errors  
10 in its financial reports for those years. Plaintiffs have alleged that between November 2, 1999, and  
11 February 11, 2003, CornerStone violated federal securities laws by engaging in fraudulent manipulation of  
12 the securities markets, making false and misleading public statements, leading to artificial inflation of its  
13 stock price. CornerStone’s stock had traded as high as \$22 per share during this period of time; by  
14 February 2003, when news of this apparent deception had reached the market, share price had declined to  
15 \$0.35.

16 Eight plaintiffs filed class-action lawsuits against CornerStone on behalf of themselves and other  
17 similarly situated investors, charging that they had purchased CornerStone stock during this period in  
18 reliance on CornerStone’s fraudulent misrepresentations, and had suffered financial loss when the value of  
19 the stock declined. Four parties have filed, and continued to pursue, motions seeking to consolidate these  
20 eight class action lawsuits and to have themselves named lead plaintiff: (i) Gilbert H. Lamphere  
21 (“Lamphere”);(ii) Lee R. Kunz on behalf of L&B Kunz Co. and as trustee for the Lee & Bev Kunz  
22 Foundation and the L&B Charitable Unitrust (“Kunz”); (iii) Arthur C. Davidson (“Davidson”); and (iv)  
23 Glenn Tamura (“Tamura”).  
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Two other parties had additionally filed lead plaintiff motions that have since been withdrawn. The "Broyles Group," headed by Charles Broyles, withdrew its lead counsel motion on August 13, 2003, and the Santa Cruz Holding Group,<sup>2</sup> after vigorously litigating its motion to be appointed lead counsel for several months, withdrew itself from contention on September 2, 2003. The remaining movants have alleged the following monetary losses during the class period at issue in this action:

Lamphere:	\$568,488
Kunz:	\$305,260
Davidson:	\$109,560
Tamura:	\$ 51,326

See Lamphere Decl., Exh. A at 2; Jackson Decl. (Kunz), Exh. C at 1; Jackson Decl. (Davidson), Exh. A at 2.

The court held a conference call among the parties on September 4, 2003, at which time no party expressed opposition to appointing Lamphere lead plaintiff. Nevertheless, the Public Securities Litigation Reform Act dictates that this court must independently inquire into Lamphere's adequacy and suitability as lead plaintiff. All plaintiffs have additionally moved to consolidate these related actions. The discussion of these two topics follows below.

## DISCUSSION

### I. Consolidation

Rule 42(a) empowers the court to consolidate "actions involving a common question of law or fact." Fed.R.Civ.P. 42(a). The eight actions currently before the court all involve shareholder losses stemming from the decline in CornerStone Propane Partner's stock price caused when its alleged misrepresentations were revealed. All plaintiffs are shareholders who bought stock between November 2, 1999, and February 11, 2003. All parties that have spoken to the issue support consolidation. Since common issues of law and fact dominate these eight cases, the court hereby concludes that consolidation will increase the efficiency and manageability of these cases and, and consolidates the eight above-captioned actions pursuant to Federal Rule of Civil Procedure 42(a).

1 II. Selection of Lead Plaintiff

2 The Public Securities Litigation Reform Act (PSLRA) directs the court to appoint as lead plaintiff in  
3 a securities class action "the member or members of the purported plaintiff class that the court determines to  
4 be most capable of adequately representing the interests of class members." 15 U.S.C. § 78u-  
5 4(a)(3)(B)(i). The Ninth Circuit has specified a three-step process for selecting a lead plaintiff. First, the  
6 plaintiff filing the action must publicize it "in a widely circulated national business-oriented publication or  
7 wire service." In re Cavanaugh, 306 F.3d 726, 729 (9th Cir. 2002). (quoting 15 U.S.C. § 78u-  
8 4(a)(3)(A)(I)). The published notice must state that "any member of the purported class may move the  
9 court to serve as lead plaintiff." 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). This step has already been  
10 accomplished.

11 Next, the court must select as the "presumptively most adequate plaintiff" (and thus the presumptive  
12 lead plaintiff) the party who "has the largest financial interest in the relief sought by the class" and "otherwise  
13 satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. § 78u-  
14 4(a)(3)(B)(iii)(I). Among the applicants for lead plaintiff, the party that has suffered the greatest financial  
15 losses from the Defendant's alleged conduct will naturally be the plaintiff with the largest financial interest in  
16 the relief sought; if that party additionally meets the "typicality" and "adequacy" requirements of Rule 23(a),  
17 that plaintiff will be the presumptive choice as lead. Cavanaugh, 306 F.3d at 730.

18 Third and finally, the court must afford other plaintiffs the opportunity "to rebut the presumptive lead  
19 plaintiff's showing that it satisfies Rule 23's typicality and adequacy requirements." Id. (citing 15 U.S.C. §  
20 78u-4(a)(3)(B)(iii)(II)). In the event that other plaintiffs are successful at rebutting the lead plaintiff's  
21 showing that it satisfies Rule 23, the process must restart at Step 2 with consideration of the party  
22 possessing the next largest financial interest in the lawsuit's outcome.

23 A. Determination of Largest Financial Interest

24 With alleged losses totaling \$568,488, Lamphere stands as the putative lead plaintiff with the largest  
25 financial stake in this litigation. Lamphere is a single individual plaintiff, and his candidacy for lead plaintiff is  
26 even supported by the Kunz entities, the candidate party with the second-largest financial stake.

27 B. Typicality and Adequacy

28 The PSLRA demands that the lead plaintiff additionally satisfy the requirements of Rule 23 of the

1 Federal Rules of Civil Procedure. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). Rule 23 requires, in relevant  
2 part, that “(3) the claims or defenses of the representative parties are *typical* of the claims or defenses of  
3 the class, and (4) the representative parties will *fairly and adequately* protect the interests of the class.”  
4 Fed.R.Civ.P. 23(a) (emphasis added). At this stage of litigation, all that is required is a “preliminary  
5 showing” that the lead plaintiff group will satisfy the “typicality” and “adequacy” requirements. Wenderhold  
6 v. Cylink Corp., 188 F.R.D. 577, 587 (N.D. Cal. 1999) (Walker, J.). Lamphere purchased significant  
7 numbers of shares of CornerStone stock during the class period and incurred substantial losses allegedly  
8 attributable to CornerStone’s actions during that period. See Check Decl., Exh. C at 1. Lamphere thus  
9 satisfies the “typicality” requirement.

10 Lamphere is, by all accounts, a sophisticated investor experienced in corporate finance, and he has  
11 stated that he is prepared and willing to oversee this litigation. See Lamphere Decl. ¶¶ 7-9. For present  
12 purposes, this is as a sufficient showing to satisfy Rule 23(b)’s “adequacy” requirement.

13 C. Lamphere's Showing

14 No other parties have attempted to rebut Lamphere's showing that he satisfies the requirements of  
15 Rule 23(b). In fact, the only remaining parties that have spoken on this issue support Mr. Lamphere's  
16 motion for appointment as lead plaintiff. The Court therefore names Mr. Lamphere lead plaintiff in this  
17 consolidated action.

18  
19 III. Approval of Class Counsel

20 The PSLRA states that the appointed lead plaintiff “shall, subject to the approval of the court, select  
21 and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). Lamphere has selected the law  
22 firm of Shiffrin & Barroway, LLP as lead counsel, and the firm of Green & Jigarjian, LLP as liaison  
23 counsel. This Court’s role is limited to approving (or rejecting) that choice. Cavanaugh, 306 F.3d at 734.  
24 The Court has no reason to doubt the professionalism or ability of either of these law firms, though the need  
25 for liaison counsel in addition to lead counsel is not readily apparent. This choice of counsel is hereby  
26 approved with the understanding that the presence these two firms must not, and will not, lead to an  
27 increase in attorneys’ fees beyond what this litigation would otherwise warrant.  
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1 CONCLUSION

2 For the foregoing reasons, the court GRANTS the Santa Cruz Holding Group's Motion for  
3 Consolidation, Motion to be Appointed Lead Plaintiff, and Motion to Appoint Counsel, and DENIES all  
4 other parties' Motions to be Appointed Lead Plaintiff.

5 IT IS SO ORDERED.

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7 Dated:

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11 MARILYN HALL PATEL  
12 Chief Judge  
13 United States District Court  
14 Northern District of California  
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ENDNOTES

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2 1. All facts in this section are drawn from the Complaint filed by Edward Erikson against CornerStone  
3 Propane Partners LP, on May 28, 2003, unless otherwise noted.

4 2. The Santa Cruz Holding Group has traced a somewhat convoluted path through this litigation. The  
5 group was originally composed of three separate entities: Mr. James Ryan, Mr. John Gallander, and a  
6 company, Santa Cruz Holding, Inc., apparently affiliated with neither of the two. Several weeks after the  
7 filing of its lead counsel motion, the Santa Cruz Holding Group "announced" (in a footnote to its  
8 Memorandum in Opposition to competing lead plaintiff motions) that the eponymous Santa Cruz Holding,  
9 Inc. was no longer a member of the Santa Cruz Holding Group, and that the group, as presently constituted  
10 (Ryan and Gallander alone), planned to proceed in its attempt to be named lead plaintiff. At this point,  
11 Ryan and Gallander still possessed an aggregated financial interest in the litigation that exceeded any of the  
12 other lead plaintiff candidates. On September 4, 2003, the Santa Cruz Holding Group withdrew its motion  
13 for appointment as lead plaintiff without explanation.

14 This court can only speculate regarding the internal machinations that drove the Santa Cruz Holding Group  
15 to first discard its namesake member and then withdraw from consideration as lead plaintiff entirely.  
16 Regardless of what may have caused the group to first shrink and then bow out, this is the type of instability  
17 that the Public Securities Litigation Reform Act was expressly designed to avoid, and it casts a negative  
18 light on either the Santa Cruz Holding Group, or its attorneys, or both. The court hopes that the strange  
19 story of the Santa Cruz Holding Group will serve as a cautionary tale to other prospective lead plaintiffs and  
20 their counsel regarding how *not* to involve themselves in class action litigation.  
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